

Supreme Court No. 84921-8

RECEIVED BY E-MAIL

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Mukilteo Citizens For Simple Government,

Appellant,

v.

City of Mukilteo, Christine Boughman, Snohomish County,
Carolyn Weikel,

Respondents,

and

Nicholas Sherwood, Alex Rion, Tim Eyman,

Respondent Intervenors.

RESPONDENT CITY OF MUKILTEO'S REQUEST FOR
JUDICIAL NOTICE

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Mukilteo and Christina Boughman
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I. IDENTITY OF MOVING PARTY

The moving party is the City of Mukilteo, a municipal corporation of the State of Washington (the "City"), defendant in the superior court.

II. STATEMENT OF RELIEF SOUGHT

The City of Mukilteo requests that the court take judicial notice of City of Mukilteo Ordinance No. 1275, adopted by the Mukilteo City Council on April 25, 2011, a certified copy of which is attached hereto as Exhibit A.

III. FACTS RELEVANT TO MOTION

The crux of this matter is the nature of the subject ballot measure. The City of Mukilteo put forth the subject ballot measure as an advisory vote so they could receive input from the electorate. Appellant Mukilteo Citizens for Simple Government ("Citizens") contends the subject measure was an invalid initiative. The trial court denied Citizens' motion below because the matter was "premature". CP 27. Now that the election has taken place and the City Council has had an opportunity to consider the input from the electorate and to take action, the facts have unfolded clarifying that the subject measure was in fact an advisory ballot measure.

IV. GROUND'S FOR RELIEF AND ARGUMENT

Pursuant to RAP 9.11, the Court may take judicial notice of additional evidence if:

(1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

Washington law also provides that judicial notice is allowed at any stage of the case, including on appeal. ER 201(f); *Spokane Research v. City of Spokane*, 155 Wn.2d 89, 98, 117 P.3d 1117 (2005).

Here, "additional proof of facts is needed to fairly resolve the issues on review," specifically, that the City of Mukilteo, by passing Ordinance No. 1275 repealing its chapter authorizing use of automated traffic safety cameras, reaffirmed its earlier position that the matter on the November ballot was advisory only--and *not* an initiative--and that the City Council retained its legislative authority as it relates to automated traffic safety cameras. Following logic a court cannot consider the invalidity of an initiative in the absence of an initiative.

The second element is also met because the passage of Ordinance No. 1275 "would probably change the decision being reviewed," in that the superior court denied the motion for declaratory judgment and injunctive relief because the matter was *premature*. CP 27. Now that the election has taken place and the Mukilteo City Council has taken action to repeal the ordinance authorizing use of automated traffic safety cameras (just one of the items in the advisory ballot measure), the issue of whether the ballot measure was advisory in nature or an initiative can be put to rest.

"Failure to present this evidence to the trial court" is excusable since the evidence did not yet exist, as the matter was premature at the time Appellant petitioned for direct review.

Regarding the fourth and fifth elements, post-judgment motions and granting of a new trial are unnecessarily expensive, especially in light of the fact that the election has already taken place and the underlying ordinance authorizing automated traffic safety cameras has been repealed.

Finally, "it would be inequitable to decide the case solely on the evidence already taken in the trial court" because the matter was premature at that level. This matter is easily put to rest when the complete factual record is before the court.

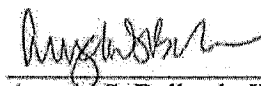
V. CONCLUSION

For all the foregoing reasons, the City of Mukilteo's request for judicial notice should be granted.

Respectfully submitted this 2nd day of May, 2011.

OGDEN MURPHY WALLACE, P.L.L.C.

By



Angela S. Belbeck, WSBA #24482
Attorneys for Respondents City of Mukilteo
and Christina Boughman

Certificate of Service

I, the undersigned, certify that on the 2nd day of May, 2011, I caused a true and correct copy of Respondent City of Mukilteo's Request for Judicial Notice to be served, by e-mail and first class mail, on the following persons:

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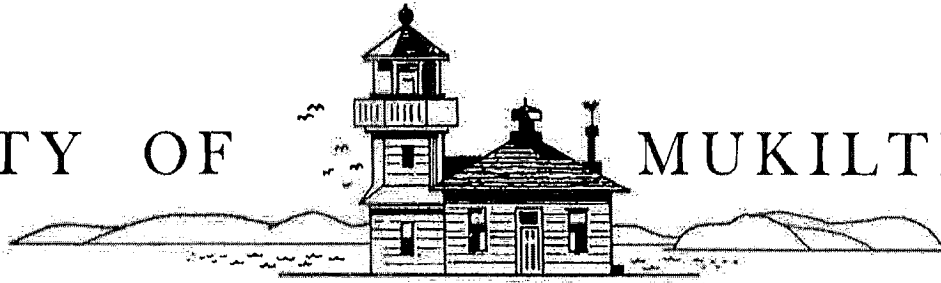
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EXHIBIT A

CITY OF



MUKILTEO

11930 CYRUS WAY • MUKILTEO, WASHINGTON 98275

Office of the City Clerk 425.263.8005

CERTIFICATION

I, Christina J. Boughman, City Clerk of the City of Mukilteo, hereby certify that the attached copy of Ordinance No. 1275 consisting of two pages is a true and correct copy of the original Ordinance adopted by the City Council on April 25, 2011.

Certified this 26th day of April, 2011,



A handwritten signature in cursive script, reading "C. Boughman".

Christina J. Boughman, City Clerk

CITY OF MUKILTEO
MUKILTEO, WASHINGTON

ORDINANCE NO. 1275

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, RELATING TO TRAFFIC SAFETY CAMERAS; RATIFYING THE REPEAL OF ORDINANCE NO. 1246 AND CHAPTER 10.05 OF THE MUKILTEO MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, RCW 46.63.170 authorizes local jurisdictions to use automated traffic safety cameras subject to certain restrictions; and

WHEREAS, on May 17, 2010, the City Council of the City of Mukilteo, Washington, adopted such provisions under Ordinance No. 1246, as codified in Chapter 10.05 of the Mukilteo Municipal Code ("MMC"); and

WHEREAS, after adoption of Ordinance No. 1246, a citizens initiative was circulated essentially seeking to repeal chapter 10.05 MMC and to establish additional requirements for adoption of new provisions relating to the City's future use of automated traffic safety cameras; and

WHEREAS, in its desire to hear from the electorate on the issues addressed in the initiative petition and regardless of whether the subject matter was subject to the initiative process, the City Council adopted Resolution 2010-22 placing the measure on the November 2, 2010; and

WHEREAS, results of the election provided by the Snohomish County Auditor's office indicated that 70.71% of the electorate voted in favor of implementing the provisions contained in the ballot proposition; and

WHEREAS, after consideration of the outcome of the vote of the electorate, the City Council by voice motion on April 4, 2011, voted to repeal Ordinance No. 1246; and

WHEREAS, the City Council wishes to confirm and ratify its prior action;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Repeal. Ordinance No. 1246 adopting Chapter 10.05 of the Mukilteo Municipal Code (allowing automated traffic safety cameras) and Chapter 10.05 of the Mukilteo Municipal Code are hereby repealed.

Section 2. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

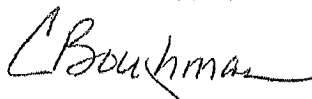
Section 3. Effective Date. This Ordinance shall be in full force and effect five (5) days after passage and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor this 25th day of April, 2011.

APPROVED:


MAYOR, JOE MARINE

ATTEST/AUTHENTICATED:


CITY CLERK, CHRISTINA J. BOUGHMAN

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: 

{ASB874967.DOC;1\00014.900000\}

FILED WITH THE CITY CLERK: 4-25-11
PASSED BY THE CITY COUNCIL: 4-25-11
PUBLISHED: 4-29-11
EFFECTIVE DATE: 5-04-11
ORDINANCE NO. 1275